IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 24th September, 2007

FAO No. 882 of 2007

United India Insurance Co. Ltd. … Appellant

Versus

Satpal and others. … Respondents

FAO No. 2011 of 2007

Satpal . … Appellant

Versus

Sumit Girdhar and others. … Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Inderjit Sharma, Advocate,
for Mr. R.C.Gupta, Advocate,
for the appellant.

Mr. Shekhar Moudgil, Advocate,
for respondent No.1

Mr. Pankaj Midha, Advocate,
for respondent Nos. 2 and 3.

(FAO No. 882 of 2007)

Present : Mr. Shekhar Moudgil, Advocate,
for the appellant.

Mr. Pankaj Midha, Advocate,
for respondent Nos. 1 and 2.

Mr. Inderjit Sharma, Advocate,
for Mr. R.C.Gupta, Advocate,
for respondent No.3.

(FAO No. 2011 of 2007)

S.D.Anand, J.

These two FAOs arise out of the award dated 15.12.2006 passed by the learned Motor Accident Claims Tribunal, Hissar (hereinafter

referred to as the Tribunal). A claim petition filed by Satpal (hereinafter referred to as the appellant) for compensation in respect of the injuries sustained by him in the cause of the impugned accident, was allowed by the learned Tribunal for a sum of Rs. 95,500/-. The amount was payable by all the respondents (driver, registered owner and also the insurer). The last indicated being appellant (hereinafter referred to as the insurer) in FAO No. 882 of 2007.

The appellant has a grievance with regard to inadequacy of the compensation awarded by the learned Tribunal. As against it, the plea raised by the Insurance Company (in FAO No.882 of 2007) is to the effect that the claim petition was nothing but an exercise based upon collusion as between the appellant on the one hand and the driver and the registered owner on the other hand. The precise grievance of the Insurance Company is that the relevant issue touching point of collusion had not been dealt with by the learned Tribunal.

In the appeal (FAO No. 2011 of 2007) filed by the appellant, the grievance is that no compensation had been awarded under the head of `loss of income' and `special diet'. It is also the grievance that inappropriate amount had been awarded in respect of the extent of permanent disability sustained by the appellant.

Insofar as the `loss of income' is concerned, the appellant did not adduce any evidence about the nature of business he was doing prior to the date of his involvement in the impugned accident. In order to be able to raise a claim for compensation under this head, it was incumbent upon the appellant to adduce evidence adequate enough in the context of his income during the pre accident period and the post accident period. It is only on a

conjunctive appraisal of the evidence that any amount of compensation could be awarded in favour of the appellant under that head. There is complete want of evidence in the context.

Insofar as the `special diet' is concerned, there also the appellant is not on a firmer footing. The appellant was required to adduce on file evidence to the effect that the Medical Officer who treated him had advised his special diet. In the absence of proof of that fact, it cannot be held that any special diet had been advised to the appellant.

The appellant does not deserve to succeed even insofar as the quantification of compensation payable in respect of the permanent disability is concerned. As per the material obtaining on the file, the appellant had to be hospitalized for four days. One of the members of the Medical Disability Board (PW1-Dr. T.S. Bagri) testified on oath that the appellant was found to have disability to the extent of 30 per cent qua the upper limb and 18 per cent qua the whole body. In that view of things, the award of compensation of Rs. 70,000/- for the permanent disability would seem to be appropriate.

Thus, the appellant (Satpal in FAO No.2011 of 2007) does not deserve to succeed at all in the FAO No.2011 of 2007.

Insofar as the appeal (No.882 of 2007), filed by the insurer, is concerned, the following facts deserve notice in the context of the issue on point of collusion. It is beyond the pale of controversy that no DDR or FIR came to be lodged by injured Satpal with the police in the context of the impugned accident. No prosecution accordingly came to be launched against the driver of the offending vehicle for having caused the impugned accident. The claimant neither lodged any private complaint nor did he

move the higher authorities to complain against the local police if there was any refrain on their part to register an FIR. Apart therefrom, the driver and the registered owner did not step into the witness box to testify the facts on oath. The refrain on their part, apart from being aimed at helping the appellant rely on unchallenged testimony qua the factum of the impugned accident, also had the effect of disabling the insurer from challenging their testimony on the touch-stone of cross-examination. (The insurer had concededly filed a contest petition under Section 170 of the Motor Vehicle Act before the learned Tribunal).

In the normal course of things, an injured would be taken to either a private hospital or a Government hospital and the police would be contacted to register a report. If there is any indefensible refrain on the part of the police in registering an FIR, the complainant or his relatives would be expected to move the higher authorities against the local police. Nothing of the type is, however, even averred to have been done in the present case.

Apart therefrom, it may be noticed that the disability certificate is proved to have been issued by the Competent Authority on 16.03.2005. The impugned accident, it may be recalled here, had taken place on 05.05.2003. The cash memos (Ex.P2 to P5) were all issued on 06.05.2003. The complainant would not being inclined to wait for a period of two years to obtain disability certificate. In the normal course of things, the complainant would file an application before the Tribunal for being forwarded to the Civil Surgeon concerned to assess the extent of permanent disability sustained by him. In this case, a time gap of about two years is proved to have intervened the date of the impugned accident and the issuance of the disability certificate. This aspect is to be appreciated in the

light of the proven fact that no MLR is proved to have been issued in respect of the injuries sustained by the appellant-Satpal in the course of the impugned accident. The appellant also did not examine any Medical Officer who may have given him treatment in respect of the injuries aforementioned. In the light of the totality of the above facts and circumstances of the case, it is evident that there was collusion between the appellant and the driver/registered owner of the offending vehicle. As already indicated, the insurer had obtained the leave of the Tribunal, by filing a plea under Section 170 of the Motor Vehicles Act to contest the appellant on merits thereof.

In the light of foregoing discussion, the finding recorded by the learned Tribunal under the issue of collusion shall stand reversed and it is held thereunder that the insurer has been able to prove that there was collusion between the appellant-Satpal and also the driver and the registered owner of the offending vehicle in the filing of the petition before the learned Tribunal.

The appeal filed by the appellant-Satpal (FAO No.2011 of 2007) shall stand dismissed; while the appeal filed by the insurer (FAO No.882 of 2007) shall stand allowed. In the totality, it is held that the appellant-Satpal shall not be held to any amount of compensation.

September 24, 2007 (S.D. Anand)
vkd Judge

Note: Whether referred to reporter : Yes/No